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October 1, 2021

VIA ECF

Honorable Ona T. Wang
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *BSG Resources (Guinea) Limited et al. v. Soros et al.*, 1:17-cv-02726 (JFK) (OTW)

Dear Judge Wang:

Plaintiffs have not dismissed this action in advance of the October 1, 2021, date set by the Court. Accordingly, Defendants submit this letter to set forth open issues and propose a schedule for moving this case forward.

Plaintiffs' Productions

Plaintiffs have repeatedly failed to comply with their obligation to produce documents in this case. To date, Plaintiffs have only produced documents from the LCIA and ICSID arbitrations, which required virtually no effort as they were previously produced in those prior proceedings. And, as addressed in Defendants' Motion for Sanctions (ECF No. 296), they have not even produced all of those documents, despite multiple court orders requiring them to do so. In addition to the LCIA and ICSID documents, there are three additional collections of documents that Plaintiffs identified in March during meet and confers as containing potentially relevant documents, which they have refused to produce since their purported funding issues arose. Defendants understand that those documents were collected by counsel in this case in 2017, or in 2013 and 2015 in connection with the LCIA and ICSID arbitrations and/or litigation in this Court commenced by Rio Tinto plc against Plaintiffs and Vale S.A., among others. (ECF Nos. 251, 251-1.) There is a reasonable basis to believe responsive documents exist in those collections: each of the proceedings for which they were collected arise from Plaintiffs' alleged bribery of Mamadie Touré and the decision of the Guinean government to revoke Plaintiffs' mining rights on the basis of that bribery. To comply with the discovery ordered by Judge Keenan, Plaintiffs must produce all outstanding LCIA and ICSID documents and conduct a reasonable search of all other potentially responsive documents. Defendants request that the Court order Plaintiffs to complete production of those documents by October 22, 2021.

Documents Related to the Swiss Prosecution of Mr. Steinmetz

It has been publicly reported in the press that, on September 17, 2021, Mr. Steinmetz was ordered to produce documents related to his Swiss criminal prosecution to Vale S.A. in civil

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proceedings in London. Mr. Steinmetz was convicted in Switzerland of bribing Mamadie Touré to obtain mining rights in Guinea – the same claim at issue here. Plaintiffs have control over Mr. Steinmetz’s documents, as Judge Lane found in BSG Resources Limited’s Chapter 15 proceedings.¹ Accordingly, Plaintiffs should be ordered to produce those documents in this action. Mr. Steinmetz is also a managing agent and alter ego of Plaintiffs and has sought affirmative relief in this Court in *In re Application of Benjamin Steinmetz*, No. 1:2020-mc-00212 (S.D.N.Y.). (See ECF No. 288.) He is therefore subject to this Court’s jurisdiction and should be compelled to produce these documents, upon service of a subpoena if necessary.

Discovery Schedule

Discovery has been delayed substantially by Plaintiffs' ongoing failure to meet their discovery obligations. There is ample evidence that, absent a Court-ordered schedule, Plaintiffs will continue to delay and evade discovery. Therefore, Defendants request that the Court order the following schedule.

- (1) Plaintiffs shall complete the production of all responsive documents by October 22, 2021.
- (2) Parties shall disclose the subject matter of expert discovery by November 12, 2021.
- (3) Fact depositions shall be concluded by December 15, 2021.
- (4) Parties shall serve opening expert reports by December 22, 2021.
- (5) Parties shall serve rebuttal expert reports by January 20, 2022.
- (6) Depositions of expert witnesses shall be completed by February 28, 2022.

Mr. Steinmetz's Fifth Amendment Claim

¹ Discovery Order at 2, *In re BSG Resources Limited*, No. 19-11845 (SHL) (S.D.N.Y. Bankr. Oct. 21, 2019), ECF No. 69 (finding “the Joint Administrators have the practical ability to produce” documents in Mr. Steinmetz’s possession, custody, or control).

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Depositions of Dag Cramer and Mamadie Touré

The parties have conferred with Mr. Cramer and agreed that his deposition will proceed on November 18, 2021. Defendants believe, however, that Plaintiffs should be required to complete their productions before then, and have proposed October 22, 2021, as the deadline for them to do so. Defendants intend to serve Ms. Touré with a subpoena seeking her deposition testimony, likewise to occur after Plaintiffs have completed their document production.

Mr. Cramer's September 7, 2021, Letter

On September 7, 2021, Mr. Cramer filed a letter regarding any privilege objections he may assert with respect to communications with David Barnett or Barnea Jaffa Lande. (ECF No. 299.) Defendants understand Mr. Cramer does not intend to assert privilege with respect to the scheduling of his deposition, but may assert privilege with respect to communications concerning “BSGR, Its Affiliated Entities, and Its Beneficial Owners,” “English civil proceedings titled *Vale S.A. & Ors v Steinmetz & Ors* (Claim No. 2019-0000723),” and “potential sanctions” in this action. (*Id.* at 2-3.) Defendants are unable to determine at this stage whether this may implicate questions at his deposition, and reserve the right to dispute any assertion of privilege by Mr. Cramer.

Legility Subpoena

In light of the stay, Defendants agreed to extend Legility LLC’s deadline to respond to or oppose the subpoena to October 15, 2021.

Defendants’ Sanctions Motion

The Court set October 8, 2021, as the deadline for Plaintiffs’ response to Defendants’ Motion for Sanctions (ECF No. 296). (ECF No. 300.) We request that the Court set October 15, 2021, as the deadline for Defendants’ reply, consistent with the prior schedule.

Letters Rogatory

Defendants’ letters rogatory remain outstanding, but we have yet to receive a response from any of those entities. Defendants will be available to further report to the Court at the October 28, 2021, status conference.

Respectfully submitted,

/s/Benjamin P. McCallen

Benjamin P. McCallen